ELECTRONICALLY FILED DEC 01, 2025 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA
Supreme Court No. 25-1220
Clayton County No. CVCV011358

TAMMY THOMPSON, ET AL.,

Petitioners-Appellants,

vs.

IOWA DEPARTMENT OF NATURAL RESOURCES,

Respondent-Appellee,

AND

SUPREME BEEF, LLC,

Indispensable Party-Appellee,

Appeal from the Iowa District Court
For Clayton County
The Honorable Richard D. Stochl, District Judge

BRIEF FOR RESPONDENT-APPELLEE

BRENNA BIRD
Attorney General of Iowa

ERIC WESSAN
Solicitor General

PATRICK C. VALENCIA
Deputy Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 823-9117 / (515) 281-8770
eric.wessan@ag.iowa.gov
patrick.valencia@ag.iowa.gov

ATTORNEYS FOR RESPONDENT-APPELLEE

TABLE OF CONTENTS

Page

STATEMENT OF THE ISSUES 7

ROUTING STATEMENT 8

NATURE OF THE CASE 9

STATEMENT OF FACTS 11

I. Thompson litigates Supreme Beef's alleged pollution before the Department in a contested administrative proceeding. 11

II. The district court dismisses Thompson's claims, citing Thompson's failure to exhaust her administrative remedies 14

ARGUMENT 15

I. Thompson failed to exhaust her administrative remedies by petitioning for judicial review before appealing to the Environmental Protection Commission. 15

A. Error preservation and standard of review. 16

B. Thompson failed to exhaust administrative remedies because she did not appeal the Department's final agency actions to the Environmental Protection Agency, as required by statute. 17

C. Ignorance of the law does not excuse failure to exhaust administrative remedies. 21

D. The Department's factually correct assertion that its January 29 memorandum constituted its "final agency action" is not a basis for asserting estoppel against the government. 24

II. Thompson's case fails on the merits as the Department fulfilled the Administrative Law Judge's directive on remand to articulate a "beneficial use" in connection with Supreme Beef's permit. 28

A. Error preservation and standard of review 28

TABLE OF CONTENTS (cont'd)

Page

B. Thompson's claims fail on the merits because neither the Administrative Law Judge's decision nor the statute governing the issuance of permits required the Department to accept her contentions. 30

CONCLUSION 34

REQUEST FOR ORAL SUBMISSION 34

CERTIFICATE OF COMPLIANCE 35

CERTIFICATE OF FILING AND SERVICE 35

TABLE OF AUTHORITIES

Page(s)

Cases

ABC Disposal Sys., Inc. v. Dep't Of Nat. Res.,
681 N.W.2d 596 (Iowa 2004).....21
Bailiff v. Adams Cnty. Conf. Bd.,
650 N.W.2d 621 (Iowa 2002).....24, 25
Benavides v. J.C. Penney Life Ins. Co.,
539 N.W.2d 352 (Iowa 1995).....28
Bennett v. Iowa Dep't of Nat. Res.,
573 N.W.2d 25 (Iowa 1997).....21
City of Lamoni v. Livingston,
392 N.W.2d 506 (Iowa 1986).....25
Diehl v. Diehl,
421 N.W.2d 884 (Iowa 1988).....22
Duck Creek Tire Serv., Inc. v. Goodyear Corners, L.C.,
796 N.W.2d 886 (Iowa 2011).....30
Fennelly v. A-1 Mach. & Tool Co.,
728 N.W.2d 163 (Iowa 2006).....25
Hedlund v. State,
875 N.W.2d 720 (Iowa 2016).....17
Homan v. Branstad,
887 N.W.2d 153 (Iowa 2016).....29
Hornby v. State,
559 N.W.2d 23 (Iowa 1997).....18
In re Marriage of Griffey,
629 N.W.2d 832 (Iowa 2001).....24
Jew v. Univ. of Iowa,
398 N.W.2d 861 (Iowa 1987).....18
Johnson v. Johnson,
301 N.W.2d 750 (Iowa 1981).....25
Keokuk Cnty. v. H.B.,
593 N.W.2d 118 (Iowa 1999).....18
King v. State,
818 N.W.2d 1 (Iowa 2012).....17
Lolkus v. Vander Wilt,
141 N.W.2d 600 (1966).....23

TABLE OF AUTHORITIES (cont'd)

Page(s)

Meier v. Senecaut,
641 N.W.2d 532 (Iowa 2002).....28
Metz v. Amoco Oil Co.,
581 N.W.2d 597 (Iowa 1998).....28
Millwright v. Romer,
322 N.W.2d 30 (Iowa 1982).....22
Mueller v. Wellmark, Inc.,
818 N.W.2d 244 (Iowa 2012).....17
N. River Ins. Co. v. Iowa Div. of Ins.,
501 N.W.2d 542 (Iowa 1993).....18
Peters v. Burlington N. R.R.,
492 N.W.2d 399 (Iowa 1992).....28
Shors v. Johnson,
581 N.W.2d 648 (Iowa 1998).....18
Shumate v. Drake Univ.,
846 N.W.2d 503 (Iowa 2014).....17
Sierra Club Iowa Chapter v. Iowa Dep't of Transp.,
832 N.W.2d 636 (Iowa 2013).....29
Smith Fertilizer & Grain Co. v. Wales,
450 N.W.2d 814 (Iowa 1990).....22
State Farm Mut. Auto. Ins. Co. v. Pflibsen,
350 N.W.2d 202 (Iowa 1984).....29
State v. Tyler,
867 N.W.2d 136 (Iowa 2015).....17

Statutes

Iowa Code § 17A.19 ..... 13, 17, 20, 21, 22, 32
Iowa Code § 455B.262 .....12, 13, 15, 19, 20, 24, 27, 31, 32, 33
Iowa Code § 455B.264 12
Iowa Code § 455B.265 .....11, 15, 33
Iowa Code § 455B.267 12

TABLE OF AUTHORITIES (cont'd)

Page(s)

Iowa Code § 455B.268 15
Iowa Code § 455B.278 ..... 9, 18, 20, 21, 23, 26, 28

Rules

Iowa R. App. P. 6.903 ..... 16, 35
Iowa R. App. P. 6.1101 8
Iowa R. Civ. P. 1.904 ..... 28, 29, 30

Other Authorities

28 Am.Jur.2d Estoppel & Waiver § 138..... 25
28 Am.Jur.2d Estoppel & Waiver § 140..... 25

STATEMENT OF THE ISSUES

I. Whether Petitioners failed to exhaust administrative remedies by petitioning for judicial review without first appealing the final agency actions of the Department of Natural Resources to the Environmental Protection Commission, as required by statute.

II. Whether Respondent violated any statutory duty by articulating a "beneficial use" in connection with Supreme Beef's water use permit without accepting Petitioners' contentions.

ROUTING STATEMENT

This appeal should be routed to the Iowa Court of Appeals because it presents a straightforward application of Iowa Supreme Court precedent on the exhaustion of administrative remedies and estoppel against the government. Iowa R. App. P. 6.1101(3)(*a*).

NATURE OF THE CASE

Petitioners ("Thompson") seek judicial review of the Department of Natural Resources' action without exhausting her administrative remedies. Thompson appeals the district court's order dismissing her Petition for Judicial Review for failure to exhaust. (D0054, Dismissed per Court at 3 (7/10/2025)); (D0056, Certified Notice of Appeal at 1 (7/29/2025).)

Thompson asked the Department to revoke Supreme Beef's water use permit. (Att. D0003, Petition at 25 (2/17/2025).) Thompson alleges that "Supreme Beef's operation may or will result in increased nitrates in Petitioners' water, either in their well water on their property, which could potentially lead to direct harm to their health . . . or in the waters where Petitioners currently recreate leading to harm to Petitioners recreational activities." (Att. D0003, Petition ¶ 120.)

But Thompson failed to exhaust her administrative remedies. Thompson sued without appealing any of the Department's actions on the permit to the Environmental Protection Commission, as required by Iowa Code section 455B.278(2). Now that the time for an appeal has passed, the Department's actions are final and foreclose Thompson from pursuing judicial review. This Court should affirm the district court's entry of dismissal because Thompson failed to exhaust administrative remedies as required by law.

Thompson's pleas to have this Court excuse her failure to exhaust administrative remedies are unpersuasive. This Court has repeatedly held that ignorance of the law does not excuse a failure to exhaust. At all stages of the contested case proceedings, Thompson was represented by counsel and assumed by law to know of her obligation to appeal any action of the Department first to the Environmental Protection Commission before pursuing judicial review. Her belief that she could petition for judicial relief from a final agency action of the Department does not excuse her failure to exhaust administrative remedies.

Nor may Thompson pass the blame for failing to exhaust administrative remedies to the Department. The Department communicated its final agency action declining to rescind Supreme Beef's permit on January 29. The Department did not state or imply that its action was an appealable action made by the Environmental Protection Commission, allowing Thompson to pursue judicial review. Thompson's belief that a final agency action of the Department could be reviewed immediately in a district court cannot be attributed to the Department's communications.

Finally—failure to exhaust aside—Thompson's claims fail on the merits. The Department complied with the Administrative Law Judge's directive to "articulate a reasonable and rational basis for finding a 'beneficial use' exists" with respect to Supreme Beef's permit. (Att. D0008, Exh. A at 26 (3/6/2025).) Also, the statute governing the issuance of water

use permits vests the "beneficial use" determination to the Department's discretion. Thompson disagrees with that conclusion, calling it conclusory and erroneous. Appellants' Brief at 20. But neither the Administrative Law Judge's decision nor the statute governing the issuance of permits required the Department to accept any of Thompson's contentions in making its final determination. Because Thompson cannot point to any violation of law in the Department's actions, her claims fail on the merits. The judgment should be affirmed.

STATEMENT OF FACTS

I. Thompson litigates Supreme Beef's alleged pollution before the Department in a contested administrative proceeding.

The Department issued Supreme Beef a permit for "diverting, storing, or withdrawing water from any surface or groundwater source," under Iowa Code section 455B.265. (Att. D0003, Petition ¶ 45.) The Department renewed Supreme Beef's water use permit effective June 1, 2022. (Att. D0003, Petition ¶ 52.) Thompson filed a notice of appeal of the decision to renew the permit with the Department on July 15. (Att. D0003, Petition ¶ 54.)

The Department then convened a contested case proceeding before the Iowa Administrative Hearing Division on the challenge to Supreme Beef's permit. (Att. D0003, Petition ¶ 55.) The Department solicited evidence and testimony about whether Supreme Beef's water use permit constituted a "beneficial use" as defined in Iowa Code sections

455B.262(2), 455B.264(2), 455B.267(4) ("Iowa Code § 455B.262 *et seq*."). At least one other named party, Steve Veysey, testified at an evidentiary hearing on February 1–2, 2024 that Supreme Beef's use of its permit presented a risk to the cleanliness of Bloody Run Creek. (Att. D0003, Petition ¶ 55.)

On November 12, the Administrative Law Judge issued a proposed decision remanding the matter to the Department to "articulate a reasonable and rational basis for finding a 'beneficial use' exists, or does not exist" based on statutory factors enumerated in Iowa Code section 455B.262 *et seq*. (Att. D0008, Exh. A at 26.) The decision made clear that it "d[id] not rescind the existing renewed permit and in no way intend[ed] to direct the DNR one way or the other in its ultimate conclusion, nor suggest[ed] that the DNR should speculate about the mere possibility of future harms." (Att. D0008, Exh. A at 27.)

The proposed decision became final on December 12 when neither "party appealed, when the DNR's Director made no changes to the ruling, and when the Environmental Protection Commission did not amend the proposed decision." (Att. D0003, Petition ¶ 58.) Thompson did not appeal the proposed decision to the Environmental Protection Commission within thirty days of its issuance. (Att. D0003, Petition ¶ 58.)

On January 29, 2025, the Department sent Thompson a memorandum articulating "a rational and reasonable basis" of the existence of a beneficial use in connection with Supreme Beef's permit

renewal. (Att. D0002, Final Agency Action at 1–2 (2/11/2025).) The Department thus declined to cancel Supreme Beef's permit and stated that the memo was the Department's "final agency action pursuant to this case." (Att. D0002, Final Agency Action at 1.) In doing so, the Department fulfilled the Administrative Law Judge's directive on remand that it considers all the statutory factors in Iowa Code § 455B.262 *et seq.* in determining whether renewing Supreme Beef's permit constituted a "beneficial use."

In reaching that conclusion, the Department observed that Supreme Beef's use was not "expected to impact the groundwater flow of the aquifer, or any other nearby surface watercourse such that issues of water quality or quantity resulting from the withdrawal would be a concern," and that Supreme Beef's use was not "expected to cause damage or alter the surrounding area's topography, nor will it deplete the underlying aquifer." (Att. D0002, Final Agency Action at 3–4.) The Department also observed that "watering livestock is a necessary and humane activity when animals are kept in captivity, which is authorized by law;" more, that industry "supports Iowa's economy by creating jobs and generating tax revenue." (Att. D0002, Final Agency Action at 3–4.)

Thompson did not appeal that agency action to the Environmental Protection Commission within thirty days either. Instead, Thompson filed a Petition for Judicial Review on February 11 under Iowa Code Section 17A.19(1), alleging that it had "exhausted all adequate

administrative remedies and [was] aggrieved or adversely affected by [a] final agency action[.]" (D0002 ¶ 118.) Thompson then asked the district court to "[r]everse the DNR's final decision finding that Supreme Beef's animal feed operation is a 'beneficial use' " and "cancel Supreme Beef's water use permit[.]" (D0002 at 25.)

II. The district court dismisses Thompson's claims, citing Thompson's failure to exhaust her administrative remedies.

On July 10, the district court granted the Department's motion to dismiss Thompson's claims. (D0054 at 3.) The district court reasoned that Thompson was "required to appeal [the Department's final agency actions] to EPC, not petition for judicial review." (D0054 at 3.) "Because petitioners have not exhausted their administrative remedies under Iowa Code Chapter 17A," the district court determined it "d[id] not have jurisdiction to consider this controversy on judicial review." (D0054 at 3.)

Thompson appeals.

ARGUMENT

I. Thompson failed to exhaust her administrative remedies by petitioning for judicial review before appealing to the Environmental Protection Commission.

Iowa law requires that a person who is "diverting, storing, or withdrawing water from any surface or groundwater source" must get a permit from the Iowa Department of Natural Resources. Iowa Code § 455B.268. To issue a permit under this subsection, the Department must determine whether the "diversion, storage, or withdrawal is consistent with the principles and policies of beneficial use and ensuring conservation[.]" Iowa Code § 455B.265(1). Supreme Beef holds a permit granted by the Department under that subsection. (Att. D0003, Petition ¶ 45.)

To determine whether a permit is directed towards a "beneficial use," the Department must consider a range of statutory factors—including the "best interests and welfare of the people," the "effect of the water use upon the owners of any land which might be affected," and whether granting the permit "[would] unreasonably impair the long-term availability of water from a surface or ground water source in terms of quantity or quality, or otherwise adversely affect the public health or welfare." Iowa Code § 455B.262 *et seq*.

The Court should affirm the district court's order of dismissal because Thompson failed to exhaust administrative remedies by petitioning for judicial review before appealing the final agency actions

of the Department to the Environmental Protection Commission. Further, neither her purported ignorance of the law nor her unsupported request for estoppel against the Department excuse her failure to exhaust administrative remedies. Finally, her claim also fails on the merits because the Department articulated a "beneficial use" in connection with Supreme Beef's water use permit, consistent with the Administrative Law Judge's directive on remand and the statute governing the issuance of water use permits.

A. Error preservation and standard of review.

The Department agrees the parties preserved error on the issue of administrative exhaustion. The Department raised this issue in its Motion to Dismiss. (D0008, Motion to Dismiss at 3–6 (3/6/2025).) Thompson resisted (D0042, Resistance at 1–5 (3/14/2025), and the district court granted summary judgment in the Department's favor on this issue. (D0054 at 2–3.)

Towards the end of her brief, Thompson makes passing references to two legal arguments that she does not develop. *See* Appellants' Brief 18–19 ("The DNR's Argument Ignores the Distinction Between Final Agency Action and Exhaustion Requirements Specific to the EPC."; "The District Court's Dismissal Undermines Public Participation and Agency Accountability.") But because those contentions are unsupported by citations to legal authority, they are waived, and the Department does not address them. *See* Iowa R. App. P. 6.903(2)(*g*)(3) (requiring an

appellant's brief contain "[a]n argument section containing the appellant's contentions and the reasons for them with citations to the authorities relied on . . . Failure to cite authority in support of an issue may be deemed waiver of that issue."); *State v. Tyler*, 867 N.W.2d 136, 166 n.14 (Iowa 2015) (noting a "passing reference" [to a legal argument] in a brief constitutes waiver).

The "standard of review for a district court's ruling on a motion to dismiss is for correction of errors at law." *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016); *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012). The Court will "affirm a district court's grant of a motion to dismiss if [a] petition fails to state a claim upon which relief may be granted." *Hedlund*, 875 N.W. at 724; *King v. State*, 818 N.W.2d 1, 8 (Iowa 2012). "For purposes of reviewing a ruling on a motion to dismiss, [the Court] accept[s] as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014).

B. Thompson failed to exhaust administrative remedies because she did not appeal the Department's final agency actions to the Environmental Protection Agency, as required by statute.

The Iowa Administrative Procedure Act permits only people or parties who have both been "aggrieved or adversely affected by a final agency action" and "exhausted all adequate administrative remedies" to seek judicial review. Iowa Code § 17A.19(1). A district court is "deprived

of jurisdiction of the case if administrative remedies are not exhausted." *Shors v. Johnson*, 581 N.W.2d 648, 650 (Iowa 1998); *Keokuk Cnty. v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999). Thus, "when a litigant requests judicial review before exhausting administrative remedies, the district court merely lacks authority to entertain a particular case." *Keokuk*, 593 N.W.2d at 122.

This Court's precedent requires two conditions to be satisfied before imposing an exhaustion requirement on a petitioner. *First*, an administrative remedy must exist for the claimed wrong. *N. River Ins. Co. v. Iowa Div. of Ins.*, 501 N.W.2d 542, 545 (Iowa 1993). *Second*, a statute must expressly or implicitly require that remedy be exhausted before resorting to the courts. *Id.*; *see also Hornby v. State*, 559 N.W.2d 23, 24 (Iowa 1997); *Jew v. Univ. of Iowa*, 398 N.W.2d 861, 864 (Iowa 1987).

Section 455B.278 of the Iowa Code satisfies both conditions. It empowers the Environmental Protection Commission to "adopt, modify, or repeal rules establishing procedures by which permits required [for water diversion, storage, and withdrawal] shall be issued, suspended, revoked, modified, or denied." Iowa Code § 455B.278(1). It then expressly provides an administrative remedy for the wrong Thompson complains of, stating: "Action by the department [of Natural Resources] upon an application for a permit . . . may be appealed to the [Environmental Protection] commission by the applicant or any affected person within thirty days of the department's action." Iowa Code § 455B.278(2). The

statute then says judicial review shall be sought from "decisions of the [Environmental Protection] commission," not those of the Department. *Id.* So Thompson was required to exhaust administrative remedies by appealing to the Environmental Protection Committee before petitioning the district court.

Thompson had two opportunities to appeal the Department's decision to the Commission and failed to appeal both times. First, on November 12, 2024, the Administrative Law Judge in the contested case about the renewal of Supreme Beef's water permit remanded the case to the Department for the limited purpose of considering statutory factors in Iowa Code § 455B.262 *et seq.* defining what constitutes a "beneficial use" and "articulating a rational and reasonable basis upon those factors of the existence, or lack of existence, of a beneficial [use] in connection with the water use permit renewal." (Att. D0008, Exh. A at 27.) The Administrative Law Judge made clear that it "d[id] not rescind the existing renewed permit and in no way intend[ed] to direct the DNR one way or the other in its ultimate conclusion, nor suggest[ed] that the DNR should speculate about the mere possibility of future harms." (Att. D0008, Exh. A at 27.)

In her Petition for Judicial Review, Thompson admits that she did not appeal this proposed decision within the statutory timeframe, stating that the proposed decision "became final when no party appealed, when the DNR's Director made no changes to the ruling, and when the

Environmental Protection Commission did not amend the proposed decision." (Att. D0003, Petition ¶ 58.) As a result, Thompson failed to exhaust her administrative remedies.

Second, the Department sent Thompson a memorandum on January 29, 2025, articulating "a rational and reasonable basis" of the existence of a beneficial use in connection with Supreme Beef's permit renewal. (Att. D0002, Final Agency Action at 1–2.) In doing so, the Department fulfilled the Administrative Law Judge's directive on remand in the contested case proceedings that it considers all the statutory factors in Iowa Code § 455B.262 *et seq.* in determining whether renewing Supreme Beef's permit constituted a "beneficial use." Accordingly, the Department declined to cancel Supreme Beef's permit and stated that the memo was the Department's "final agency action pursuant to this case." (Att. D0002, Final Agency Action at 1.) Thompson did not appeal this determination to the Environmental Protection Commission either.

Rather than appeal either agency action to the Commission as required by Section 455B.278(2), Thompson seized on the Department's assertion that the memorandum constituted a "final agency action" to argue that she had exhausted her administrative remedies and could petition for judicial review under Section 17A.19. (Att. D0003, Petition ¶ 98.) But section 455B.278(2) requires any "[a]ction by the department [of Natural Resources] upon an application for a permit" to be appealed

to the Environmental Protection Commission within thirty days to fully exhaust. That includes the Department's final agency actions. As the district court noted, "[t]he letter correctly states that the memorandum represented the final agency action of the DNR. However, it was not the final agency action of the EPC. Petitioners were required to appeal to [the] EPC, not petition for judicial review." (D0054 at 3.)

Thus, the district court correctly dismissed Thompson's claims for failing to exhaust "all adequate administrative remedies" as required by Section 455B.278(2). Iowa Code § 17A.19(1).

C. Ignorance of the law does not excuse failure to exhaust administrative remedies.

Section 455B.278(2)'s requirement that all agency actions of the Department must be appealed to the Environmental Protection Commission before judicial review is well-known in Iowa law. Indeed, this Court has repeatedly adjudicated cases arising from the Department's agency actions that were appealed to the Environmental Protection Commission in a timely manner. *See, e.g., ABC Disposal Sys., Inc. v. Dep't Of Nat. Res.*, 681 N.W.2d 596, 599 (Iowa 2004) ("On administrative appeal, the Iowa Environmental Protection Commission . . . affirmed the DNR's order that ABC was required to obtain a permit but reversed the Commission's order assessing the civil penalty. ABC sought judicial review of the Commission's decision in district court."); *Bennett v. Iowa Dep't of Nat. Res.*, 573 N.W.2d 25, 27

(Iowa 1997) ("Bennett appealed the DNR's declaratory ruling to the Environmental Protection Commission, which upheld the ruling. Upon Bennett's petition for judicial review to the district court, . . . the court affirmed the Environmental Protection Commission's ruling.")

Nonetheless, Thompson contends that her failure to exhaust administrative remedies before petitioning for judicial review should be excused because she acted based on her purportedly mistaken belief about what the law required. *See* Appellants' Brief at 18 ("Petitioners believe[d] that the filing of a Petition for Judicial Review was their only option and that this matter . . . should not be dismissed."); *id.* at 15 ("Petitioners-Appellants relied on [the DNR's] representation in good faith and filed their Petition for Judicial Review within the thirty-day deadline prescribed by Iowa Code section 17A.19(3).")

But Thompson's contention fails because "[e]very citizen is assumed to know the law and is charged with knowledge of the provisions of statutes." *Millwright v. Romer*, 322 N.W.2d 30, 33 (Iowa 1982). This Court has repeatedly held that persons "should not escape the legal consequences of failing to observe statutory requirements by asserting ignorance of the law." *Smith Fertilizer & Grain Co. v. Wales*, 450 N.W.2d 814, 816 (Iowa 1990); *Diehl v. Diehl*, 421 N.W.2d 884, 888 (Iowa 1988).

Here, Thompson argues that she believed that the Department's statement that its January 29 memorandum constituted its "final agency action" was her ticket to district court. But that overlooks Section

455B.278(2)'s express requirement that all actions of the Department must be appealed to the Environmental Protection Commission before they are ripe for judicial review. Because this Court has repeatedly concluded that "[i]gnorance of the fact excuses, ignorance of the law excuses not," it should deny Thompson's attempt to sidestep Section 455B.278(2). *Lolkus v. Vander Wilt*, 141 N.W.2d 600, 604 (1966).

Besides, Thompson's Petition for Judicial Review suggests that she was, in fact, aware of the requirements of Section 455B.278(2). Indeed, she relies on that statutory subsection in her Petition to establish venue in Clayton County. *See* (Att. D0003, Petition ¶ 63 ("Venue is also proper in Clayton County pursuant to Iowa Code section 455B.278(2), which states that notwithstanding chapter 17A, petitions for judicial review may be filed in 'any county in which the property affected is located.' ").) Thus, to credit Thompson's ignorance of law argument, the Court would have to believe that she was only aware of the third sentence of Section 455B.278(2) and not the first. That is unlikely.

Because Thompson's purported ignorance of the exhaustion requirements of Section 455B.278(2) does not excuse her failure to exhaust administrative remedies, the Court should affirm the district court's order dismissing her Petition for Judicial Review.

D. The Department's factually correct assertion that its January 29 memorandum constituted its "final agency action" is not a basis for asserting estoppel against the government.

On January 29, the Department sent Thompson a memorandum articulating "a rational and reasonable basis" of the existence of a beneficial use in connection with Supreme Beef's permit renewal. (Att. D0002, Final Agency Action at 1–2.) The Department thus declined to cancel Supreme Beef's permit and stated that the memo was the Department's "final agency action pursuant to this case." (Att. D0002, Final Agency Action at 1.) In doing so, the Department fulfilled the Administrative Law Judge's directive on remand that it considers all the statutory factors in Iowa Code § 455B.262 *et seq.* in determining whether renewing Supreme Beef's permit constituted a "beneficial use."

Thompson says the Department's true statement that the memorandum constituted its "final agency action" misled Thompson into petitioning for judicial review without first appealing to the Environmental Protection Commission. Appellants' Brief at 15. So she asks this Court to estop the Department from arguing that she failed to exhaust her administrative remedies. *Id.* Based on well-established Iowa law, the Court should deny her request.

"[E]stoppel does not lie against government agencies except in exceptional circumstances." *Bailiff v. Adams Cnty. Conf. Bd.*, 650 N.W.2d 621, 627 (Iowa 2002); *In re Marriage of Griffey*, 629 N.W.2d 832, 834

(Iowa 2001); *City of Lamoni v. Livingston*, 392 N.W.2d 506, 511–12 (Iowa 1986); 28 Am.Jur.2d Estoppel & Waiver § 138, at 557–58 (2000). A party seeking to invoke the doctrine of estoppel against a public body "bears a heavy burden, particularly when the government acts in a sovereign or governmental role rather than a proprietary role." *Adams Cnty.*, 650 N.W.2d at 627.

The "exceptional circumstances" under which equitable estoppel will lie against the government include instances when, "in addition to the traditional elements of estoppel, the party raising the estoppel proves affirmative misconduct or wrongful conduct by the government or a government agent." *Fennelly v. A-1 Mach. & Tool Co.*, 728 N.W.2d 163, 180 (Iowa 2006) (quoting 28 Am.Jur.2d Estoppel & Waiver § 140, at 559 (2000)). The traditional elements of estoppel are: "(1) a false representation or concealment of material facts; (2) [a] lack of knowledge of the true facts on the part of the actor; (3) the intention that it be acted upon; and (4) reliance thereon by the party to whom made, to his prejudice and injury." *Johnson v. Johnson*, 301 N.W.2d 750, 754 (Iowa 1981).

Here, Thompson cannot establish any of the traditional elements of estoppel, much less show affirmative misconduct on the Department's part. The Department neither made a false representation in its January 29 memorandum nor concealed material facts from Thompson. The memorandum was the Department's "final agency action" as it stated on

the cover letter. Nothing on the cover letter stated or implied that the memorandum was the "final agency action" of the Environmental Protection Commission that could be appealed to district court on judicial review. Nothing in the letter suggested that appeal to the district court was appropriate following that order. As the district court noted in its order dismissing Thompson's Petition, "[t]he letter correctly states that the memorandum represented the final agency action of the DNR. However, it was not the final agency action of the EPC. Petitioners were required to appeal to EPC, not petition for judicial review." (D0054 at 3.)

Also, throughout the contested case proceedings challenging the renewal of Supreme Beef's permit, Thompson was represented by counsel, apprised of all material facts, and assumed by law to know the statutory administrative exhaustion requirements of Iowa Code section 455B.278(2). If Thompson incorrectly believed that she could directly petition a district court from an action of the Department, that oversight cannot be attributed to any representation by the Department. Rather, it owes to her own mistake of law, which cannot excuse her failure to exhaust administrative remedies under Iowa law.

Indeed, the memorandum consists of a cover letter written by a Supervisor of the Water Supply Engineering Section of the Department. (Att. D0002, Final Agency Action at 1.) The letter informed Thompson that the Department had fulfilled the Administrative Law Judge's directive to "articulate a reasonable and rational basis for finding a

'beneficial use" exists" in connection with Supreme Beef's water use permit. (Att. D0002, Final Agency Action at 1.) The memorandum also includes an analysis from a Department geologist, examining the various statutory factors enumerated in Iowa Code section 455B.262 *et seq*. and concluding that a "beneficial use" existed with regard to Supreme Beef's water use. (Att. D0002, Final Agency Action at 2–4.)

Far from affirmative misconduct, the January 29 memorandum shows two Department employees acting in good faith within their governmental capacities to discharge their statutory duties. Thompson cannot carry her burden of demonstrating that exceptional circumstances exist which necessitate invoking an exception to the general rule that equitable estoppel may not be used against government agencies.

Perhaps realizing her inability to invoke estoppel against the Department, Thompson asks this Court to "remand this matter to the DNR for the next appropriate review of the 'final' agency action at the agency level as specified and directed by the Court" as an alternative remedy. Appellants' Brief at 18. But Thompson's request fails because the Department has already concluded that Supreme Beef's permit should be renewed as it furthers a "beneficial use" under Iowa Code section 455B.262 *et seq*. Thus, there is no more work for the Department to do in the administrative proceedings challenging the renewal of Supreme Beef's permit. If Thompson disagreed with the Department's conclusion, she was required to appeal that action to the Environmental

Protection Commission "within thirty days of the department's action." Iowa Code § 455B.278(2). Now, the time to initiate such an appeal has long passed. Thompson may no longer petition for judicial review.

II. Thompson's case fails on the merits as the Department fulfilled the Administrative Law Judge's directive on remand to articulate a "beneficial use" in connection with Supreme Beef's permit.

A. Error preservation and standard of review

Thompson did not preserve error on the merits of her claim under the Iowa Administrative Procedure Act. Thompson argues that "[t]he DNR's Conclusory Memo Violated Its Statutory Duties." Appellants' Brief at 20. But the district court did not decide that issue. Thus, that issue is not preserved on appeal.

This Court has repeatedly held that "[i]t is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before [the Court] will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002); *see also Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998) ("issues must be presented to and passed upon by the district court"); *Peters v. Burlington N. R.R.*, 492 N.W.2d 399, 401 (Iowa 1992) (same).

Thus, "[w]hen a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a [rule 1.904(2)] motion requesting a ruling in order to preserve error for appeal." *Meier*, 641 N.W.2d at 537; *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d

352, 356 (Iowa 1995); *State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206 (Iowa 1984). Rule 1.904(2) of the Iowa Rules of Civil Procedure states that "the findings and conclusions [of a district court] may be reconsidered, enlarged, or amended and the judgment or decree modified accordingly or a different judgment or decree substituted" on motion by an adversely affected party. Indeed, this Court has held that "[w]hen a rule 1.904(2) motion requests a ruling on an issue properly presented to but not decided by the district court, the motion is proper even if the issue is a purely legal one." *Homan v. Branstad*, 887 N.W.2d 153, 161 (Iowa 2016) (citing *Sierra Club Iowa Chapter v. Iowa Dep't of Transp.*, 832 N.W.2d 636, 641 (Iowa 2013)).

Neither party disputes that the district court did not rule on Thompson's argument that the Department violated its statutory duties. That is despite Thompson presenting that issue to the district court by raising it in her Petition for Judicial Review. (Att. D0003, Petition at 20–25.)

The district court dismissed Thompson's Petition on the alternative grounds that Thompson had "not exhausted their administrative remedies under Iowa Code Chapter 17A" by appealing the Department's final decision to the Environmental Protection Commission as required by statute. (D0054 at 3.) The district court's order does not address whether the Department violated its statutory duties under the Iowa Code.

Yet Thompson did not move the district court to reconsider, enlarge, or amend under rule 1.904(2). *See* Iowa R. Civ. P. 1.904(3) ("[A] rule 1.904(2) motion to reconsider, enlarge, or amend . . . will be considered timely if filed within 15 days after the filing of the order, judgment, or decree to which it is directed.") Instead, she filed an appeal, raising the argument that the Department violated its statutory obligations.

Because Thompson did not preserve error on the merits of her claim, the Court may affirm the district court's order dismissing her claims on this alternative ground. *See Duck Creek Tire Serv., Inc. v. Goodyear Corners, L.C.*, 796 N.W.2d 886, 893 (Iowa 2011) ("It is well-settled law that a prevailing party can raise an alternative ground for affirmance on appeal without filing a notice of cross-appeal, as long as the prevailing party raised the alternative ground in the district court."). For its part, the Department argued in its Motion to Dismiss that it fulfilled its statutory obligations by "prepar[ing] a January 21, 2025 memorandum articulating a rational and reasonable basis of the existence of a beneficial use in connection with the water use permit renewal." (D0008 at 2.)

B. Thompson's claims fail on the merits because neither the Administrative Law Judge's decision nor the statute governing the issuance of permits required the Department to accept her contentions.

Even if the Court concludes that Thompson exhausted administrative remedies, or that her failure to do so was excused, and

had preserved error on the merits or her claim, Thompson's claims still fail on the merits because the Department fulfilled the Administrative Law Judge's directive on remand and the statute governing the issuance of water use permits vests the "beneficial use" determination to the Department's discretion.

On November 12, 2024, the Administrative Law Judge issued a proposed decision remanding the contested case proceedings to the Department to "articulate a reasonable and rational basis for finding a 'beneficial use' exists, or does not exist" based on statutory factors enumerated in Iowa Code section 455B.262 *et seq*. (Att. D0008, Exh. A at 26.) The decision made clear that it "d[id] not rescind the existing renewed permit and in no way intend[ed] to direct the DNR one way or the other in its ultimate conclusion, nor suggest[ed] that the DNR should speculate about the mere possibility of future harms." (Att. D0008, Exh. A at 27.) That proposed decision became final "when no party appealed, when the DNR's Director made no changes to the ruling, and when the Environmental Protection Commission did not amend the proposed decision." (Att. D0003, Petition ¶ 58.)

And that is exactly what the Department did. On January 29, 2025, the Department informed Thompson that it would not "exercis[e] its discretionary authority to cancel or modify a water use permit" under Section 455B.271(2) after considering "whether [Supreme Beef's] proposed use will negatively impact the public's health, safety, interests

in lands or waters or cause injury to persons or property." (Att. D0002, Final Agency Action at 2.) In doing so, the Department "articulate[d] a reasonable and rational basis for finding a 'beneficial use' exists" with respect to Supreme Beef's permit. (Att. D0002, Final Agency Action at 1.)

In reaching that conclusion, the Department explained its reasoning in detail—observing that Supreme Beef's use was not "expected to impact the groundwater flow of the aquifer, or any other nearby surface watercourse such that issues of water quality or quantity resulting from the withdrawal would be a concern," nor was it "expected to cause damage or alter the surrounding area's topography, nor will it deplete the underlying aquifer." (Att. D0002, Final Agency Action at 3–4.) The Department also observed that "watering livestock is a necessary and humane activity when animals are kept in captivity, which is authorized by law" and it "supports Iowa's economy by creating jobs and generating tax revenue." (Att. D0002, Final Agency Action at 3–4.) After balancing these diverse interests, the Department concluded that Supreme Beef's water use constituted a "beneficial use" as defined in Iowa Code section 455B.262 *et seq.* (Att. D0002, Final Agency Action at 3–4.)

The Iowa Administrative Procedure Act asks courts to "give appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(11)(*c*). Here, the statute governing the

issuance of water use permits vests the "beneficial use" determination in the Department's discretion. In relevant part, the statute states that the Department shall grant a water use permit *"[i]f the department determines* after investigation that the diversion, storage, or withdrawal is consistent with the principles and policies of beneficial use and ensuring conservation[.]" Iowa Code § 455B.265(1) (emphasis added).

In her brief, Thompson makes clear that she believes that the Department's determination was "conclusory" or erroneous. Appellants' Brief at 20. But the Administrative Law Judge's decision only called on the Department to "articulate a reasonable and rational basis for finding a 'beneficial use' exists, or does not exist" based on the statutory factors enumerated in Iowa Code section 455B.262 *et seq*. (Att. D0008, Exh. A at 26.) Neither the Administrative Law Judge's decision nor the statute governing the issuance of permits require the Department to accept Thompson's contentions during the contested case proceedings. Having considered the statutory factors listed in Iowa Code section 455B.262 *et seq*., the Department concluded that Supreme Beef's water use constituted a "beneficial use." Even though Thompson is dissatisfied with the Department's conclusion, her Petition should be dismissed as she cannot show the Department violated any law.

CONCLUSION

This Court should affirm the district court's dismissal of all of Thompson's claims.

REQUEST FOR ORAL SUBMISSION

The Department requests to be heard in oral argument.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

ERIC WESSAN
Solicitor General

/s/ Patrick C. Valencia
PATRICK C. VALENCIA
Deputy Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 281-8770
patrick.valencia@ag.iowa.gov

ATTORNEYS FOR RESPONDENT-APPELLEE

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*e*), 6.903(1)(*g*)(1), 6.903(1)(*h*), and 6.903(1)(*i*)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 5,829 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

/s/ Patrick C. Valencia
PATRICK C. VALENCIA

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 1st day of December, 2025, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

/s/ Patrick C. Valencia
PATRICK C. VALENCIA